

RONALD RICHARDSON V. VARIETY STORES, DEPOSITION OF CHARLES CHILDERS

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 3 WESTERN DIVISION
 4 RONALD RICHARDSON, Individually,
 5 Plaintiff,
 6 v.
 7 VARIETY STORES, INC., a Foreign Corporation, Case 5:13-cv-00155-F
 8 Defendant.

10 DEPOSITION OF
 11 * * * * *
 12 CHARLES CHILDERS
 13 * * * * *
 14 Taken On
 15 Friday, January 31, 2014 at 11:10 a.m.
 16 In The Law Offices Of
 17 Hutchens Law Firm
 18 4317 Ramsey Street
 19 Fayetteville, North Carolina
 20
 21
 22
 23
 24 Reported By:
 25 Tammy Johnson, CVR-CM-M

1 A P P E A R A N C E S

2 ON BEHALF OF THE PLAINTIFF:

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1 I N D E X 3
 2
 3 WITNESS DIRECT CROSS REDIRECT RECROSS
 4 (Charles Childers)
 5 By Mr. Puryear 4-180 188-194
 6 By Mr. Lane 180-188 194-195
 7
 8 * * *
 9 E X H I B I T S

10
 11 PLAINTIFF'S DESCRIPTION PAGE
 12 (None Marked)
 13
 14 DEFENDANT'S DESCRIPTION PAGE
 15 Number 8 Curriculum Vitae of 46
 16 Charles Childers
 17 Number 9 Expert Disclosure 66
 17 Number 10 Plaintiff's Rule 26(a)(2) 72
 18 Expert Witness Disclosures
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 22
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 25

1 I, Tammy Johnson, CVR-CM-M, being a Certified 4
 2 Court Reporter and a Notary Public in and for the state
 3 of North Carolina, was appointed to record the
 4 proceeding in the matter of Ronald Richardson,
 5 Individually, Plaintiff, versus Variety Stores, Inc., a
 6 Foreign Corporation, Defendant, on the 31st day of
 7 January, 2014, beginning at 11:10 a.m. in the offices
 8 of Hutchens Law Firm, located at 4317 Ramsey Street,
 9 Fayetteville, North Carolina.

10 * * *

11 Thereupon:

12 CHARLES CHILDERS,
 13 being first duly sworn in the manner provided
 14 by law was examined and testified as follows:

15 * * *

16 DIRECT EXAMINATION BY MR. PURYEAR:

17 Q. Would you please state your name for the
 18 record?

19 A. Charles Childers.

20 Q. Good after- -- well, good morning, Mr.
 21 Childers. How are you?

22 A. I'm doing well.

23 Q. As you know, my name is P.J. Puryear, and
 24 I represent Variety Stores in this matter. Have you
 25 ever had your deposition taken before?

EXHIBIT



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1 A. No.
2 Q. Okay. Let's -- let's go over a couple of
3 ground rules.
4 MR. PURYEAR: Before we start
5 with Mr. Childers, Mr. Lane, I want us to
6 agree to the following stipulations, if
7 it's okay by you. The reporter is
8 qualified to give the oath; that the
9 notice of deposition is proper; that
10 objections will be preserved except if
11 there's an objection to the form of the
12 question; and that the court reporter will
13 note the time we are on and off the
14 record, and that that time will govern the
15 amount of time I have with the witness.

16 MR. LANE: Agreed.

17 MR. PURYEAR: Great.

18 Q. Let's go over a couple of items with what
19 to expect, Mr. Childers. I'm going to ask a series of
20 questions trying to elicit a series of answers. This
21 is the court reporter. She's talking into a microphone
22 and creating a transcript of everything we say. For
23 that reason, there's a couple of important things we
24 should keep in mind, the first of which is we shouldn't
25 talk over each other because she can't say what two

5 1 of time you need to take a break, as Mr. Lane alluded
2 to before we started, let me know. My only request is
3 that if we have -- if I've asked you a question, that
4 you answer the question before we take that break,
5 okay?

6 A. (Nods head affirmatively.)

7 Q. We've ordered lunch. It's going to be
8 here at 12:45, so that gives us an hour and half. But
9 if you need a break in that first hour and a half, you
10 let me know.

11 A. All right.

12 Q. If at any particular period of time you
13 recall or want to amend an answer, or recall new
14 information or want to amend an answer that you've
15 already given me, let me know.

16 A. Okay.

17 Q. I'm happy to go back and let you more
18 fully answer a question I've previously asked. We'll
19 just pick back up where we left off. I'm here to get
20 full testimony from you. So by all means, if you do
21 remember something, please let me know. If there's any
22 set of documents you think are helpful to a particular
23 response, you know, please describe them for me so I
24 can understand, you know, what may be helpful to your
25 testimony, okay?

1 people are saying at the same time. And I'll do my
2 best to do that. It's a tendency -- we all get into
3 conjecture and back and forth, but if we could try our
4 best, that would be great.

5 Anytime you answer a question, that needs
6 to be verbal, yes, no, not uh-huh or huh-uh, not a
7 movement of the head, so that way she creates an
8 accurate record. Is that okay?

9 A. Yes.

10 Q. Okay. I'm going to do my best to ask
11 clear and concise questions. At times, Mr. Lane is
12 going to object to the form of those questions. That's
13 just to preserve it for the record. If you understand
14 the question, I'd ask that you go forward with
15 answering it. If at any particular period of time I
16 ask a question that you don't understand, please just
17 ask me to rephrase it. Like I said, I'm going to do my
18 best to be clear, but if you need me to restate
19 something, just ask me, okay?

20 A. Okay.

21 Q. All right. If you don't ask me to
22 restate a question, I'm going to under- -- I'm going to
23 assume that you understand the question. Is that fair?

24 A. That's fair.

25 Q. Okay, great. If at any particular period

6 1 A. Okay.

2 Q. Do you have any -- other than your stomach
3 bug, do you have any medical condition or illness that
4 may make it difficult for you to understand and
5 accurately answer my questions today?

6 A. No.

7 Q. Okay. Do you take any medications for any
8 mental or memory problems?

9 A. No.

10 Q. Have you had any alcohol or drugs in the
11 past 18 hours?

12 A. No.

13 Q. Do you understand you must tell the full
14 truth?

15 A. Yes.

16 Q. Okay. What is your current home address?

17 A. 30 -- 3520 Southwest 104 Avenue, Miami,
18 Florida 33165.

19 Q. What was the beginning number again?

20 A. 3520.

21 Q. 3520, okay. Have you ever been arrested?

22 A. No.

23 Q. Have you ever filed for bankruptcy?

24 A. Well, wait a minute. Let's go back to the
25 original question, arrested. Yes, I've been arrested.

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1	Q. What were you arrested for?	9	A. I have no affiliation with that	11
2	A. For reckless driving.		2 organization.	
3	Q. When was that?		3 Q. Well, you have some affiliation with them.	
4	A. I don't know. About five years ago.		4 You may not be a member, but --	
5	Q. Where was it?		5 A. Well, no official -- I'm not a member of	
6	A. Miami.		6 it, correct.	
7	Q. Doesn't everybody drive recklessly down		7 Q. Okay. All right. Did you help in forming	
8	there?		8 NAA?	
9	A. Just to avoid getting into an accident,		9 A. No.	
10	yes.		10 Q. When did you first learn about NAA?	
11	Q. Okay.		11 A. First learned about it, that I don't	
12	A. It's almost mandatory you drive recklessly		12 recall.	
13	to avoid accidents.		13 Q. Can you give me an approximate year?	
14	Q. Do you have any -- have you ever been		14 A. I'd rather not guess.	
15	arrested for anything else?		15 Q. So you have no idea when you first learned	
16	A. No.		16 about NAA?	
17	Q. Okay. Have you ever filed for bankruptcy?		17 A. I don't remember the year.	
18	A. No.		18 Q. Was it last year?	
19	Q. When were you first contacted about this		19 A. It wasn't last year.	
20	case?		20 Q. Was it 2012?	
21	A. Sometime in 2012.		21 A. It was not 2012.	
22	Q. Beginning of the year? End of the year?		22 Q. Okay. So you can say it was before 2012?	
23	A. I think it was toward the end of the year.		23 A. Yes.	
24	Q. Who contacted you?		24 Q. Let's go back to this meeting. After this	
25	A. I was contacted by Ronnie Richardson.		25 meeting you said Mr. Richardson called you. What did	
1	Q. Do you know how he got your contact	10	1 y'all talk about?	12
2	information?		2 A. He called me and stated that he had some	
3	A. Yes. He had my phone number.		3 -- some issues that he had encountered at a Roses.	
4	Q. Do you know who gave it to him?		4 Q. What kind of issues?	
5	A. I believe I gave it to him.		5 A. Basically he said he had -- he had	
6	Q. When did you give it to him?		6 problems with the restrooms and he had problems with	
7	A. I gave it to him probably earlier that		7 getting through the aisles.	
8	year.		8 Q. Do you recall anything else about the	
9	Q. What were the circumstances of your		9 conversation?	
10	meeting?		10 A. That was it. He asked me if I would come	
11	A. There was a meeting that was called by		11 up, take a look at it with him, take some measurements,	
12	Jackie Blue, and we had a lunch meeting with -- Denise		12 document to see what was maybe an ADA problem, maybe --	
13	Payne was there and Jackie Blue was there. Ronnie		13 you know, sometimes they have difficulties where it's	
14	Richardson was there, and I think there was a few		14 not an ADA issue. It's just, you know, maybe their	
15	others. I don't remember everybody else that was		15 arms are too short. So he wanted clarification to make	
16	there. And it was basically an explanation of --		16 sure that the barriers, you know, were -- were there	
17	Denise had called the meeting, an explanation of what		17 and that they were enforceable under the ADA.	
18	National does, what National is about and so forth.		18 Q. When did you make the decision to serve as	
19	And that's how I met -- Ronnie was invited through		19 an expert in this case?	
20	Jackie Blue to that meeting.		20 A. Actually the day he called me up.	
21	Q. And when you say National, are you		21 Q. So even though there was no lawsuit, you	
22	referring to National Alliance for Accessibility?		22 had already decided to be an expert for the lawsuit?	
23	A. Yes, National Alliance for Accessibility.		23 A. No. A lot of times, I come up and there	
24	Q. Okay. What's your affiliation with that		24 will be a problem or there won't be a problem with a	
25	organization?		25 particular location and then nothing further happens.	

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<p>1 I give them advice and that's it.</p> <p>2 Q. But if there was a case, you had already</p> <p>3 made the decision you were going to be the expert for</p> <p>4 the case?</p> <p>5 A. No. I don't make that decision.</p> <p>6 Q. Okay. So then the day he called you was</p> <p>7 not the day you decided you were willing to serve as an</p> <p>8 expert in the case, then, was it?</p> <p>9 A. Again, I don't make that decision, you</p> <p>10 know, about, you know, if I'm going to be the expert or</p> <p>11 who's going to be the expert.</p> <p>12 Q. Well, you certainly have the decision to</p> <p>13 not be the expert, don't you?</p> <p>14 A. Yes, I do have the decision to decline,</p> <p>15 yes.</p> <p>16 Q. Okay. So when did you make the decision</p> <p>17 to become an expert in this case?</p> <p>18 A. I never made that decision.</p> <p>19 Q. So you're not going to be an expert in</p> <p>20 this case?</p> <p>21 A. No. I didn't say that. I said that it's</p> <p>22 not my decision to make.</p> <p>23 Q. Did anyone ever ask you to be the expert,</p> <p>24 to serve as an expert witness in this case?</p> <p>25 A. Yes.</p>	<p>13</p> <p>1 Q. More than 50?</p> <p>2 A. I don't -- I don't know.</p> <p>3 Q. So more than 20 and you're not sure</p> <p>4 whether it's more than 50?</p> <p>5 A. That's correct.</p> <p>6 Q. Do you keep records related to each of the</p> <p>7 cases in which you're asked to serve as an expert?</p> <p>8 A. I don't keep them for long periods of</p> <p>9 time, no.</p> <p>10 Q. Do you have any file in relation to this</p> <p>11 case?</p> <p>12 A. No, not particularly. I submit all my</p> <p>13 work to the attorney and that's it.</p> <p>14 Q. Do you have any documents in your</p> <p>15 possession that relate to this case?</p> <p>16 A. No.</p> <p>17 Q. What about e-mails?</p> <p>18 A. No e-mails.</p> <p>19 Q. Do you use e-mail?</p> <p>20 A. I use e-mail, yes.</p> <p>21 Q. Have you e-mailed Mr. Richardson?</p> <p>22 A. No. I can't say that I have.</p> <p>23 Q. Have you had e-mailed with Ms. Payne?</p> <p>24 A. No. She doesn't have Internet.</p> <p>25 Q. Have you e-mailed with Ms. Blue?</p>	<p>15</p>
<p>1 Q. And who asked you to serve as an expert</p> <p>2 witness in this case?</p> <p>3 A. It would be Chris Lane.</p> <p>4 Q. And when did Mr. Lane ask you to serve as</p> <p>5 an expert witness in this case?</p> <p>6 A. After I submitted the pictures and the</p> <p>7 measurements and a report to Chris, then he asked me to</p> <p>8 continue.</p> <p>9 Q. And approximately when was that?</p> <p>10 A. On this case, I want to say late 2012.</p> <p>11 Q. So in late 2012, Mr. Lane asked you to</p> <p>12 serve as an expert in this case?</p> <p>13 A. Yes.</p> <p>14 Q. Did you say yes?</p> <p>15 A. Yes.</p> <p>16 Q. So would that be the time in which you</p> <p>17 decided to be an expert witness in this case?</p> <p>18 A. Yes. I was asked and I decided to.</p> <p>19 Q. How many other cases have you served as an</p> <p>20 expert witness for Mr. Lane?</p> <p>21 A. I don't remember the exact number.</p> <p>22 Q. Can you give me an approximation?</p> <p>23 A. I would rather not guess.</p> <p>24 Q. More than 20?</p> <p>25 A. I would say more than 20.</p>	<p>14</p> <p>1 A. No.</p> <p>2 Q. Have you e-mailed with Mr. Lane?</p> <p>3 A. Yes. I believe I might have, yes.</p> <p>4 Q. You believe you might have?</p> <p>5 A. Yes.</p> <p>6 Q. Have you inspected other Roses stores than</p> <p>7 the one involved in this litigation?</p> <p>8 A. Yes.</p> <p>9 Q. What Roses stores have you inspected?</p> <p>10 A. The Roses at Westwood Center. That's all</p> <p>11 that I can recall right now.</p> <p>12 Q. Have you inspected any other stores</p> <p>13 operated by Variety other than the Roses at Westwood</p> <p>14 and the Roses at Village?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Up until the time you decided to serve as</p> <p>17 an expert witness, had you been provided with any</p> <p>18 documents in relation to the litigation?</p> <p>19 A. Up until?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I don't understand the question.</p> <p>22 Q. Well, you said that Mr. Richardson called</p> <p>23 you?</p> <p>24 A. Yes.</p> <p>25 Q. And that after he called, you agreed to</p>	<p>16</p>

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1 come up. Presumably, you came up and you performed an
2 initial inspection?

3 A. Yes.

4 Q. Okay. Up until that time, had anybody
5 provided you any documents related to that store?

6 A. No.

7 Q. Okay. And then you performed a second
8 inspection of the store?

9 A. A Rule 34.

10 Q. Correct.

11 A. Yeah.

12 Q. I was there for most of it.

13 A. Yes.

14 Q. And Mr. Lane was there.

15 A. Yes.

16 Q. Before that period of time, had anybody
17 provided you any documents related to that Roses?

18 A. No.

19 Q. Do you have any kind of written contract
20 or engagement letter with Mr. Lane?

21 A. I do not.

22 Q. What about Mr. Richardson?

23 A. I do not.

24 Q. Have you ever had any kind of written
25 contract or engagement letter with Mr. Lane?

17 1 Q. Have you seen any of the 310 pages that
2 Variety has produced in response to that production --
3 excuse me -- in response to that discovery?

4 A. Three-hundred pages.

5 THE WITNESS: Would that be the
6 notebook?

7 A. Is he allowed to answer a question? I saw
8 -- I saw a notebook with several -- what looks like
9 several hundred pages, yes.

10 Q. When did you see this notebook?

11 A. Last night.

12 Q. What color was the notebook?

13 A. I believe it was white.

14 Q. Did you read anything that was in the
15 notebook?

16 A. I glanced through it.

17 Q. Tell me what you saw.

18 A. I saw lot of paperwork. It looked like
19 invoices, a collection of -- let's see. What else did
20 I see? I saw -- I believe I saw my report, my Rule 34
21 report. I saw a collection of invoices. Didn't quite
22 understand a lot of the -- a lot of the material that
23 was there, more than half. I pretty much only
24 understood my own report. It looked like a lot of
25 invoices. I remember seeing an invoice for a boiler or

18 1 A. No.

2 Q. What about with NAA?

3 A. No.

4 Q. I didn't see you with any kind of file or
5 papers, but did you bring anything other than your
6 phone and your glasses and your yogurt to the
7 deposition?

8 A. And my deodorant.

9 Q. And your deodorant. Did you bring
10 anything else to the deposition?

11 A. No, I did not.

12 Q. Okay. Have you seen any of the pleadings
13 in this litigation?

14 A. Let's see. What have I seen? I think
15 I've seen the complaint, and that's pretty much about
16 it.

17 Q. Have you seen Variety's answer to the
18 complaint?

19 A. No.

20 Q. Have you seen any of Mr. Richardson's
21 responses to the discovery submitted by Variety?

22 A. No.

23 Q. Have you seen any of Variety's responses
24 to the discovery submitted by Mr. Richardson?

25 A. No.

20 1 something, which I don't know how -- what that had to
2 do with anything regarding this case. But there seemed
3 to be a lot in there. I don't know how much of it
4 pertained with this case, though.

5 Q. Okay. Did you read through any of the
6 documents that were in this notebook closely?

7 A. No.

8 Q. And other than the invoices and your own
9 report, do you recall any other documents from the
10 notebook?

11 A. No, I do not.

12 Q. All right.

13 MR. PURYEAR: Let's go off the
14 record for a second.

15 (OFF THE RECORD AT 11:26 A.M.)

16 (BACK ON THE RECORD AT 11:26 P.M.)

17 Q. Please list everything that you've
18 considered in forming the opinions that you're going to
19 offer today.

20 A. Let's see. The 1991 ADA standards, 2010
21 ADA standards, and MS [sic] Means construction data.
22 That's all I can recall.

23 Q. What about your visits to the store? Are
24 they going to be one of the bases for the opinions
25 you're going to offer today?

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1	A. Yes. Visual -- visual visits, yes.	21	1 which you were present.	23
2	Q. Anything else?		2 Q. And that was the store manager, Diane	
3	A. Experience.		3 McKimmon?	
4	Q. What are MS Means construction data?		4 A. I don't know. I don't remember her name.	
5	A. That's the industry standard for -- for		5 Q. Have you spoken with any other Variety	
6	ascertaining prices to repair, replace materials.		6 employees at this store, other than the person you	
7	Q. Is there any kind of certification		7 spoke with at the Rule 34 inspection?	
8	involved in using MS Means construction data?		8 A. No.	
9	A. No.		9 Q. Have you ever spoken with any Variety	
10	Q. You didn't mention the 2004 standards. Is		10 store employees other than the person you spoke to at	
11	there a particular reason for that?		11 the Rule 34 inspection?	
12	A. No, no particular reason.		12 A. No.	
13	Q. Would you consider those to be one of the		13 Q. You've never spoken to any employees at	
14	bases for the opinions you're going to offer today?		14 any of the other stores you've inspected -- any other	
15	A. Not particularly.		15 Roses stores you've inspected?	
16	Q. Why is that?		16 A. Only to respond by "hello" when they say	
17	A. 2004, basically the -- a lot of the		17 hello.	
18	standards that we're talking about in this case really		18 Q. Nothing of substance, then?	
19	didn't change since 1991, so that's the reason why		19 A. Nothing of substance.	
20	1991, referring to those. And we'll refer to 2010.		20 Q. Did you request any documents be provided	
21	Q. Did you make any notes when preparing for		21 to you in order to form a basis of the opinions you're	
22	this deposition?		22 going to give today?	
23	A. No.		23 A. No.	
24	Q. Who have you talked to in the course of		24 Q. Did you request any specific documents to	
25	preparing your opinions for this case?		25 form the opinions that you gave as a part of your	
1	A. Myself. That's it. No one.	22	1 initial inspection or your Rule 34 inspection?	24
2	Q. Have you talked to Mr. Richardson?		2 A. Did I request any documents? I have not	
3	A. No.		3 requested any documents.	
4	Q. Well, you have talked to Mr. Richardson		4 Q. Have you ever been qualified by any court	
5	before?		5 as an expert?	
6	A. Yes. Yes.		6 A. I've had my fees approved by the Court.	
7	Q. Okay. But your conversations with		7 Q. When was that?	
8	Mr. Richardson do not have any impact on the opinions		8 A. I don't recall.	
9	you formed for this case?		9 Q. What case was it in?	
10	A. That's correct.		10 A. I don't recall.	
11	Q. All right. Have you talked to any other		11 Q. Federal or state court?	
12	members of your profession?		12 A. Federal.	
13	A. In this case, no.		13 Q. So you've had your fees approved, but you	
14	Q. Did you talk to anybody with any kind of		14 don't know whether or not you've ever been qualified by	
15	financial or accounting background?		15 the Court as an expert?	
16	A. No.		16 A. That's correct.	
17	Q. Did you talk to anybody from Variety,		17 Q. Have you ever been excluded by any court	
18	other than me?		18 from presenting expert testimony?	
19	A. No.		19 A. No.	
20	Q. I assume I'm not going to form a basis of		20 Q. Have any of your -- do you know whether	
21	your opinions for this case?		21 any of your expert reports have been stricken from the	
22	A. You never know.		22 record?	
23	Q. Have you ever spoken with any of the		23 A. They have not.	
24	employees at this store?		24 Q. Has anyone tried to strike your expert	
25	A. No. Well, only at the Rule 34, which --		25 reports from the record?	

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1	A. No.	25	1	Q. Okay. When you said that the ledgers look	27
2	Q. What is your fee for this deposition?		2	like this, you pointed to Mr. Lane's yellow legal pad?	
3	A. I believe it's 250 an hour.		3	A. Yeah. It's a -- it's a -- I call that a	
4	Q. What will your fee be for trial		4	ledger pad.	
5	appearance?		5	Q. Okay.	
6	A. I don't recall. I'd have to refer to my,		6	A. You know, anything with lines.	
7	you know, cost sheet.		7	Q. Okay. And what information do you put on	
8	Q. Will you charge to travel to North		8	this ledger pad?	
9	Carolina and appear at trial?		9	A. Usually just pretty much the hours.	
10	A. Yes.		10	That's it.	
11	Q. How much will you charge to travel to		11	Q. Okay. So with respect to this case, you	
12	North Carolina?		12	have a ledger pad?	
13	A. I don't recall what the travel costs are.		13	A. Yes.	
14	Q. How much time do you have in this case so		14	Q. Okay. But you don't keep a file?	
15	far? Strike that.		15	A. No. I don't -- I don't retain files.	
16	Do you keep track of the amount of time		16	Q. So the only thing in your possession that	
17	you spend on each case?		17	relates to this case would be the ledger for the case?	
18	A. Yes.		18	A. That's correct.	
19	Q. Where do you keep track of the time you		19	Q. And then I assume you keep a copy of your	
20	spend on each case?		20	inspection reports?	
21	A. On a ledger.		21	A. Yes.	
22	Q. And do you have one ledger for all of your		22	Q. Okay. Are those hard copies or are they	
23	cases?		23	electronic copies?	
24	A. Huh-uh.		24	A. Hard copies.	
25	Q. You have one ledger for each case?		25	Q. Okay. Where do you keep the hard copies	
1	A. No, I have -- it looks like that. It's --	26	1	of your inspection reports?	28
2	and when it fills up or when the case is done, maybe		2	A. In my file cabinet.	
3	two or three pages.		3	Q. Okay. Well, you told me you didn't have a	
4	Q. Okay. Let's back up because I'm not sure		4	file for the case, so where are the inspection reports	
5	we got a good answer. That was my fault. I didn't		5	for this case?	
6	remind you to say yes or no.		6	A. I don't understand.	
7	A. Okay.		7	Q. All right. I asked you if you had a file,	
8	Q. So do you have a ledger for each case in		8	right?	
9	which you participate?		9	A. Yes.	
10	A. I have a -- I have -- I keep my hours on		10	Q. Which could mean a hanging file in a file	
11	ledger paper.		11	cabinet.	
12	Q. Okay. My question is do you have a		12	A. It could mean many things when you say a	
13	separate ledger for your hours for each separate case,		13	file.	
14	or do you have one general ledger?		14	Q. Yeah, it could. You said no to all of	
15	A. No. There would be -- each separate case		15	them. You said, "No, I don't have a file." And then	
16	would have -- each set of papers would be different.		16	you told me you've got a general ledger and you keep	
17	It's not just a running -- a long-running journal, if		17	hard copies of your inspection reports --	
18	you will.		18	A. Okay. I --	
19	Q. Right. So if, --		19	Q. -- let me finish. And so I'm just trying	
20	A. Okay.		20	to understand --	
21	Q. -- for instance, if you're participating		21	A. Right.	
22	in five cases right now, you would have five ledgers;--		22	Q. -- the system that you've got in place.	
23	A. Yes.		23	MR. LANE: Objection.	
24	Q. -- is that correct?		24	A. I think that I -- I understood the	
25	A. That's correct.		25	question to mean did I retain files, and I believe	

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1 that's what the question was. And that was my answer. 29
 2 Do I currently have a file on this case? Yes.
 3 Q. Okay. What's in that file?
 4 A. In that file would be copies of my initial
 5 report. It would be photos, copies of photos that were
 6 included in that report. There would be my Rule 34
 7 report, also copies of photos of that. And there would
 8 be my invoice and, of course, my ledger notes.
 9 Q. Okay. Do you know how much time you have
 10 in this case so far?
 11 A. I don't.
 12 Q. When Mr. Richardson calls you and says,
 13 "Mr. Childers, would you come up and inspect the
 14 store," is that when your general ledger begins?
 15 A. No, because I never know if it -- if
 16 there's anything to go forward with or not. I mean,
 17 there's several times you go to a place and it might be
 18 the mirror is too high, you know, and I advise them. I
 19 said, "Yes, you're right. The mirror is too high. I
 20 suggest maybe write a letter or talk to somebody. It's
 21 just a minor detail. It doesn't require a federal
 22 case."
 23 Q. With respect to this Roses, did you ever
 24 tell Mr. Richardson to write this kind of letter?
 25 A. No. I don't advise them on what to do,

1 you know, in that case so, no. 30
 2 Q. Okay. Well, you just said, "Sometimes I
 3 tell them just write a letter. It doesn't warrant a
 4 federal case."
 5 A. Well, true. True. Okay. So --
 6 Q. So my question is, you know -- you said --
 7 I mean, you already said no, you didn't ask Mr.
 8 Richardson to -- or didn't tell Mr. Richardson to do
 9 that; is that correct?
 10 A. To write a letter; that's correct.
 11 Q. Did you tell Mr. Richardson he should file
 12 a lawsuit?
 13 A. No, I did not.
 14 Q. Have you been paid any money to date for
 15 your involvement in this case?
 16 A. I believe so.
 17 Q. What have you been paid?
 18 A. I don't recall.
 19 Q. What have you been paid for?
 20 A. I've been paid for work that's been done.
 21 Q. Have you done any other work other than
 22 the initial inspection and the Rule 34 inspection?
 23 A. Besides being here? In addition to being
 24 here?
 25 Q. Yeah.

1 A. I don't believe so, no. 31
 2 Q. Okay. Don't you worry. I've got a check
 3 for you being here too, so.
 4 A. I appreciate that.
 5 Q. The amount you've been paid, is it less
 6 than \$10,000?
 7 A. Yes.
 8 Q. You mentioned this notebook that you saw
 9 yesterday; is that correct?
 10 A. Yes.
 11 Q. All right. Was that at the meeting you
 12 had with Mr. Lane and Mr. Richardson?
 13 A. I'm sorry?
 14 Q. Was that at the meeting you had with Mr.
 15 Lane and Mr. Richardson?
 16 A. Yes.
 17 Q. Okay. Did you do anything else to prepare
 18 for this deposition?
 19 A. No.
 20 Q. How long was the meeting you had with Mr.
 21 Lane and Mr. Richardson?
 22 A. I believe about an hour.
 23 Q. Where was it?
 24 A. It was at a restaurant. Actually, we were
 25 having dinner.

1 Q. Other than talking with Mr. Lane and Mr. 32
 2 Richardson and looking or glancing, as you said,
 3 through that notebook of a hundred pages, did you do
 4 anything else to prepare for this deposition?
 5 MR. LANE: Objection.
 6 A. No.
 7 Q. Okay. So the only documents you've
 8 reviewed would have been those pages you glanced at in
 9 the notebook; is that correct?
 10 A. That's correct.
 11 Q. And of those, the only things you can
 12 distinctly remember were the invoices and your own Rule
 13 34 inspection report?
 14 A. That's correct.
 15 Q. Okay. Did you see your initial inspection
 16 report in there?
 17 A. I don't remember.
 18 Q. Have you ever testified before a jury?
 19 A. No.
 20 Q. What areas of expertise do you contend you
 21 can offer the court in this case?
 22 A. Areas of expertise, well, I'm a certified
 23 ADA coordinator through a program at the University of
 24 Missouri. I have 11 years of ADA work-related
 25 experience.

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1 Q. I appreciate that, but let me re-ask the
 2 question. I mean, I understand what you're getting at,
 3 but just so we're clear, my question was what areas of
 4 expertise do you contend you can offer the Court in
 5 this case, and you've told me that you're certified ADA
 6 coordinator through a class at Mizzou and that you're
 7 -- University of Missouri -- and that you have 11
 8 years' experience.

9 A. Working in ADA-related cases, yes.

10 Q. Okay. So is the only --

11 A. And projects.

12 Q. Is the only other expertise that you
 13 contend you can offer the Court, that which is related
 14 to the Americans with Disabilities Act?

15 A. Yes.

16 Q. Okay. What does that mean -- when you
 17 hear someone say you're going to be an expert on the
 18 ADA, what does that mean to you?

19 MR. LANE: Objection.

20 A. What does it mean to me?

21 Q. Yeah.

22 A. It means that you're able to -- that you
 23 -- that you've had some training in the ADA; you've
 24 been through courses; you've been through -- when they
 25 change the accessibility code in 2010, you've been

1 through subsequent courses that teach you the
 2 difference and so forth. So that's what I would say --

3 Q. So -- so when they --

4 A. -- to answer your --

5 Q. I'm sorry. I didn't mean to talk over
 6 you.

7 A. Yeah. That's what I would say to answer
 8 your question.

9 Q. So when they changed the ADA in 2010, did
 10 you take subsequent courses to that change?

11 A. Yes.

12 Q. What courses did you take?

13 A. They were offered -- a series of
 14 symposiums, ADA symposiums in Orlando, Florida.

15 Q. And who were those symposiums offered by?

16 A. Actually, and one in Las Vegas.

17 Q. Well, that's a good place for a symposium,
 18 if you ask me. Who were -- who were these symposiums
 19 offered by?

20 A. National ADA Symposium.

21 Q. Is that the pen you have in your pocket?

22 A. Yes.

23 Q. Okay. All right. So would you consider
 24 yourself proficient in the 2010 ADA standards?

25 A. 2010, yes.

33

1 Q. And would you consider yourself proficient
 2 in the 1991 ADA standards?

3 A. Yes.

4 Q. Are you going to offer -- strike that.

5 Do you believe that you have any
 6 experience that would allow you to qualify as an expert
 7 in anything other than the application of the Americans
 8 with Disabilities Act?

9 A. No.

10 Q. What's the highest level of school you've
 11 attended?

12 A. Associate of science.

13 Q. When did you graduate?

14 A. I don't recall. It's been awhile.

15 Q. We'll get to your resume in a second.

16 A. Yeah.

17 Q. Now, you've taken classes since you
 18 received your associate's of science -- associate of
 19 science; is that correct?

20 A. That's correct.

21 Q. And your associate of science doesn't
 22 relate in any way to your current profession?

23 A. That's correct.

24 Q. Okay. What is your current profession?

25 A. My current profession, I work -- I have my

35

1 -- my company is ADA Assistance Group.

2 Q. You say it's your company. Are you a
 3 principal?

4 A. Yes.

5 Q. What's your title?

6 A. President.

7 Q. Are you a founder?

8 A. Yes.

9 Q. Are you the only founder?

10 A. Yes.

11 Q. How long have you been the president of
 12 ADA Assistance Group?

13 A. Since 2007.

14 Q. Is that your full-time job?

15 A. Yes.

16 Q. Do you currently do any other work than
 17 your work through the ADA Assistance Group?

18 A. Yes.

19 Q. What other work do you do?

20 A. I work on various projects.

21 Q. What does that mean?

22 A. It means part of my background is

23 corporate finance. And from time to time, I work on
 24 projects related to raising money to fund different

25 projects.

36

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1	Q. When you say that a part of your	37	A. Actually, this particular project doesn't	39
2	background is corporate finance, what does that mean?		require capital. So what I am doing there is advising	
3	A. That means that I spent a year -- several		my son and basically from time to time and how -- what	
4	years in -- as part of a team to raise money for		direction to go and so forth.	
5	projects for companies that required funding to go to		Q. Okay. Now, you say you're spending a	
6	their next stage of development.		couple of hours a week or that. What about in 2013?	
7	Q. Okay.		How much time would you say you spent each week in 2013	
8	A. So what you -- what we would call early		on projects not related to the ADA?	
9	stage financing.		A. I would say about the same.	
10	Q. Seed financing, angel investing, --		Q. About the same. And with this particular	
11	A. Right.		example, you said that there's no corporate financing	
12	Q. -- things of that nature?		involved, but that was the only example you gave me	
13	A. That's correct.		with respect to the various projects in which you	
14	Q. Okay. Do you have any corporate finance		engaged.	
15	experience other than your years spent raising money		A. Uh-huh.	
16	for start-up companies?		Q. With respect to 2013, did you engage in	
17	A. I have no formal education in corporate		any other projects than corporate finance and your	
18	finance.		son's business?	
19	Q. Right. I appreciate that, but my question		A. Other than corporate finance?	
20	was whether you had any other experience in corporate		Q. Correct.	
21	finance other than the years you spent raising money		A. No.	
22	for early start-up companies?		Q. Okay. I'm just trying to understand what	
23	A. I would say no.		you mean by various projects, and it sounds like	
24	Q. Okay. Sorry if I'm talking too fast. I		typically --	
25	apologize. I do that sometimes. Approximately how		A. Oh. Oh, yeah, they're all corporate	
1	much time a month do you spend -- strike that.	38	finance related.	40
2	Have you spent any time in 2014 working on		Q. Well, except for the one with your son?	
3	these various projects?		A. Well, even that would be considered -- I	
4	A. Yes.		would consider it corporate finance.	
5	Q. And how much time have you spent in 2014		Q. Okay. Even though that one doesn't	
6	on -- on this -- these various projects?		require any financing?	
7	A. Right now it seems to be like a couple		A. At this time; that's correct.	
8	hours a week.		Q. In the last five years, have any of the	
9	Q. Okay. And what kind of work are you doing		various projects you've worked on outside of your work	
10	right now?		related to the ADA involved anything other than raising	
11	A. I'm working on a very interesting project		money for early start-up companies?	
12	that involves my son. And he has developed what we		A. Other than raising money?	
13	believe is some new technology, which is in the process		Q. (Nods head affirmatively.)	
14	of being patented as we speak. Its primary use will be		A. Well, there's -- there's a lot more	
15	in school safety. And currently it is being introduced		involved than just raising money. When you get	
16	in the Miami-Dade Public School System and they love		involved in a project, there's the formation of the	
17	the idea, and so they're in the process now -- in fact,		project. There's the writing of a business plan.	
18	they've just given him his first order to do that. And		There's strategizing. And then when you get to the	
19	after that, we expect that it will go nationwide. We		point of where it's time to raise money, then that's	
20	wanted to give Miami-Dade -- everything in Miami, as		when that kicks in. So I hope I answered your	
21	I'm sure with most small cities, is political, so we		question.	
22	wanted to let them be the flagship to launch this new		Q. Let me follow up and say with each of	
23	technology, so.		those stages that you've just mentioned, formation of a	
24	Q. And are you doing anything in relation to		business plan, execution of the plan, reaching the	
25	that project other than trying to raise capital?		stage of needing capital, you participate in all those	

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<p>1 stages?</p> <p>2 A. Yes.</p> <p>3 Q. And that's work you've done in the last</p> <p>4 five years?</p> <p>5 A. Yes.</p> <p>6 Q. What kind of businesses have you done that</p> <p>7 for?</p> <p>8 A. Actually, it goes back beyond five years.</p> <p>9 Q. I know, but I'm interested in the last</p> <p>10 five years.</p> <p>11 A. The last five years. The last five years,</p> <p>12 besides my son's project, it would probably be one</p> <p>13 other project.</p> <p>14 Q. Okay. And what project was that?</p> <p>15 A. The name of it is National Accessibility</p> <p>16 Foundation.</p> <p>17 Q. Is that related to the ADA?</p> <p>18 A. It kind of does.</p> <p>19 Q. What does the National Accessibility</p> <p>20 Foundation do?</p> <p>21 A. It is -- it is -- it was set up as a</p> <p>22 501(c)(3) nonprofit. Its mission is to offer</p> <p>23 low-interest, no-interest loans to property owners to</p> <p>24 assist them in removing barriers from their properties.</p> <p>25 Q. And what work have you done for the</p>	<p>41 projects to you and --</p> <p>42 Q. Sure.</p> <p>43 A. All right. Basically my role generally --</p> <p>44 and I was part of a team back then. My role generally</p> <p>45 is to write the business plan and to, you know, assist</p> <p>46 in strategizing on how to go forward. Other members of</p> <p>47 the team were specialized in the actual raising of</p> <p>48 funds and so forth and that's pretty much what they</p> <p>49 did, even up to the point of taking the companies</p> <p>50 public for initial public offering.</p> <p>51 Q. And what -- is there any particular type</p> <p>52 of business that you assisted? So there's -- I mean,</p> <p>53 let me frame that for you. I understand you talked</p> <p>54 about early start-ups all the way through public. I'm</p> <p>55 not interested in that. I'm more interested in the</p> <p>56 substance of the business. You know, are they IP? You</p> <p>57 know, are they McDonald's? Are they school systems?</p> <p>58 What types of businesses have you assisted?</p> <p>59 A. Some of them have been IP. Some of them</p> <p>60 have been legal. Some of them have been -- I think</p> <p>61 that's about all I can recall right now.</p> <p>62 Q. Okay. Have any of them been retail?</p> <p>63 A. Retail. I don't believe so.</p> <p>64 Q. Have you ever published -- let's turn back</p> <p>65 to the ADA now.</p>
<p>1 National Accessibility Foundation?</p> <p>2 A. What work have I done?</p> <p>3 Q. Uh-huh.</p> <p>4 A. I'm in the process now -- I'm about 90</p> <p>5 percent finished writing their business plan.</p> <p>6 Q. And so in the last five years, the only</p> <p>7 two projects you've worked on that have been unrelated</p> <p>8 to your -- we'll call it ADA inspection work --</p> <p>9 A. Sure.</p> <p>10 Q. -- loosely -- would be your son's project</p> <p>11 and the business plan for the National Accessibility</p> <p>12 Foundation?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. What about -- you made mention that</p> <p>15 this went back further than five years. So discuss or</p> <p>16 tell me, you know, what other experience you've had</p> <p>17 outside of the ADA context.</p> <p>18 A. I've worked on various projects. I've</p> <p>19 worked on -- I mean, there's -- a lot come to mind.</p> <p>20 I've done small projects. I've done larger projects.</p> <p>21 I mean, how many do you want me to go through?</p> <p>22 Q. Well, discuss generally the areas of work</p> <p>23 that you've done outside of the ADA context. How about</p> <p>24 that?</p> <p>25 A. Okay. Well, how about if I describe the</p>	<p>42 A. Okay.</p> <p>43 Q. I think I've gone far enough down that</p> <p>44 rabbit hole. With respect to the ADA, have you</p> <p>45 published any literature, articles, or books?</p> <p>46 A. No.</p> <p>47 Q. Have you lectured at any seminars?</p> <p>48 A. Yes.</p> <p>49 Q. What seminars have you lectured at?</p> <p>50 A. Title III, Public Accommodations.</p> <p>51 Q. And how many seminars do you believe</p> <p>52 you've lectured at?</p> <p>53 A. Two.</p> <p>54 Q. And when were they?</p> <p>55 A. I think one was last year and one was the</p> <p>56 year before.</p> <p>57 Q. And so was your presentation on any</p> <p>58 specific aspect of Title III?</p> <p>59 A. It's a -- it's course that goes into the</p> <p>60 history of -- the history of the ADA, Congress's</p> <p>61 intent, then goes into the specific titles.</p> <p>62 Q. Well, you say the specific titles. Did</p> <p>63 you -- did you discuss anything beyond Title III?</p> <p>64 A. Yes. We discussed Title I, Employment;</p> <p>65 Title II, State and Federal; Title III, Public</p>

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1 Miscellaneous.
2 Q. So you're familiar with the congressional
3 intent behind each of these titles?
4 A. Yes.
5 Q. Have you read all the materials produced
6 by the House and the Senate and the committees that
7 have dealt with the ADA?
8 A. I don't believe I've read every article,
9 no. I don't believe I would have ever had time to have
10 done such.
11 Q. Have you read some of them?
12 A. Yes.
13 Q. Okay. Do you mind if we put this on the
14 floor?
15 A. Oh, no, not at all.
16 Q. We had a series of deposition exhibits
17 when Mr. Richardson was deposed before you. They're
18 sitting in front of you, and they're marked Exhibits 1
19 through 7. I believe they're in reverse order.
20 A. Okay.
21 Q. I'm going to refer to those eventually.
22 But in the meantime, I'm going to start showing you
23 some other exhibits, but I just want to let you know
24 what the documents were in front of you so you knew,
25 okay?

45

47

1 this looks like to be -- we could assume that it's an
2 old C.V.
3 Q. Okay. Well, I'll represent to you that
4 this was the C.V. that was attached to the expert
5 disclosure signed by your -- not by your attorney, by
6 Mr. Lane. So what -- is there a more recent copy of
7 your C.V. that you have?
8 A. Yes, there is.
9 Q. Okay. And what's on that more recent copy
10 of the C.V. that's not on this copy?
11 A. I couldn't answer in the entirety. I --
12 at first glance, though, I can see that the -- yeah,
13 that certification is not here. I can see that there
14 are certain classes that were taught that are not here.
15 I've already -- that's in answer to your previous
16 question that you asked about.
17 Q. The two -- the two --
18 A. Yes.
19 Q. -- seminars you gave?
20 A. That's correct.
21 Q. Okay. Have you had any other
22 certifications since 2009, other than the 2010
23 certification you received from the University of
24 Missouri?
25 A. Not certifications. Basically they're

1 (DEFENDANT'S EXHIBIT NUMBER 8 WAS MARKED
2 AND HANDED TO THE WITNESS.)
3 Q. I'm going to show you what's now been
4 marked as Deposition Exhibit 8 and ask whether or not
5 you recognize this document?
6 A. Yes.
7 Q. And what is it?
8 A. I'm sorry?
9 Q. And what is it?
10 A. Oh. It's my C.V.
11 Q. Okay. Can you tell me the last time that
12 this was updated?
13 A. I cannot.
14 Q. You mentioned you took classes through the
15 University of Missouri. Did you get any kind of
16 certificate --
17 A. Yes.
18 Q. -- of completion for that?
19 A. Yes.
20 Q. All right. I don't see that listed on
21 here on page 4, which I assume would be under either
22 "Education" or "Membership" --
23 A. Oh, then in answer your to question, yeah,
24 I do see what would date this, and that is that, yeah,
25 there is a substantial -- it doesn't go past 2009. So

46

48

1 more of certificate of attendances of symposiums that I
2 mentioned earlier.
3 Q. The ones in Miami and Las Vegas?
4 A. The one in Orlando.
5 Q. Orlando.
6 A. And Las Vegas, yes.
7 Q. Have you received any certificates of
8 attendance other than the one -- other than the two
9 symposiums you attended in Orlando and Las Vegas?
10 A. Since 2009, I don't believe so.
11 Q. Looking -- let's start at the back page
12 here on page 4 under "Licenses and Degrees." You've
13 listed the associate of science. Is that the same
14 associate of science we discussed earlier?
15 A. That's correct.
16 Q. And did you -- it appears that you got
17 that in 1982, looking at your education and membership,
18 from Miami-Dade Community College.
19 A. Okay.
20 Q. All right. Is that correct?
21 A. That's correct.
22 Q. Okay. And then above that, it says in
23 2004 you received a certificate of completion,
24 Americans with Disabilities Act with State of Florida
25 Amendments from B.T. Builders, Inc. Who is B.T.

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<p>1 Builders, Inc.?</p> <p>2 A. B.T. Builders, Inc., I don't know who that</p> <p>3 is. I just took a course from them that was given at a</p> <p>4 college, maybe Broward Community College, to be exact.</p> <p>5 Q. How long was that class?</p> <p>6 A. The class was -- I believe it was -- I'd</p> <p>7 rather not guess.</p> <p>8 Q. Did you meet weekly?</p> <p>9 A. No. I think it was two days at eight</p> <p>10 hours --</p> <p>11 Q. Total?</p> <p>12 A. -- each day. Yes.</p> <p>13 Q. All right. So like a weekend class?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And it says that this is</p> <p>16 completion of Americans with Disabilities Act with</p> <p>17 State of Florida Amendments. Do you know what that</p> <p>18 refers to?</p> <p>19 A. I guess in 2004 they were talking about</p> <p>20 the state of Florida, the building code, the --</p> <p>21 Q. So this class -- I'm sorry. I didn't mean</p> <p>22 to interrupt. Go ahead.</p> <p>23 A. The building code for 2012. I mean --</p> <p>24 sorry -- 2004.</p> <p>25 Q. And that would be the Florida building</p>	<p>49</p> <p>1 came with the class at University of Missouri and the</p> <p>2 certificates of attendance for the two seminars?</p> <p>3 A. That's correct.</p> <p>4 Q. There's nothing else?</p> <p>5 A. Not that I can remember at this time.</p> <p>6 Q. What did you do professionally from 1982</p> <p>7 to 2004?</p> <p>8 A. 1982 to 2004, corporate finance.</p> <p>9 Q. And so we're saying the same thing; when</p> <p>10 you say that you did corporate finance, this refers to</p> <p>11 helping with the raising of capital for early start-up</p> <p>12 companies?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did you do anything else in helping</p> <p>15 early start-up companies raise capital during this</p> <p>16 particular period of time?</p> <p>17 A. Do anything else then?</p> <p>18 Q. Yes.</p> <p>19 A. No.</p> <p>20 Q. Okay. During that particular period of</p> <p>21 time, were any of the experiences you had related to</p> <p>22 retail?</p> <p>23 A. No.</p> <p>24 Q. Did you do any ADA-related work prior to</p> <p>25 2004?</p>	<p>51</p>
<p>1 code?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then you list here that you're</p> <p>4 -- in 2009 you became a building safety professional</p> <p>5 and it lists the International Code Council. What did</p> <p>6 you have to do in order to become a building safety</p> <p>7 professional?</p> <p>8 A. Actually there, I am a member of the ICC.</p> <p>9 Q. Okay.</p> <p>10 A. That's just a classification of which they</p> <p>11 call it, building safety professional.</p> <p>12 Q. Okay. Do you have to pay to become a</p> <p>13 member of the ICC?</p> <p>14 A. Yes.</p> <p>15 Q. All right. So this is just saying you've</p> <p>16 paid to become a member of the ICC at the building</p> <p>17 safety professional level?</p> <p>18 A. Yes, which has entitled me to all of their</p> <p>19 ICC international code literature and so forth.</p> <p>20 Q. Okay. Are there any other member benefits</p> <p>21 to the ICC?</p> <p>22 A. Not really.</p> <p>23 Q. Do you have any -- so are there any other</p> <p>24 certifications that you've received other than the 2004</p> <p>25 certificate of completion, the 2010 certification that</p>	<p>50</p> <p>1 A. Yes, 2003.</p> <p>2 Q. And what did you do in 2003?</p> <p>3 A. 2003, that was also corporate finance</p> <p>4 related. It was a blend, actually. 2003, I was doing</p> <p>5 corporate finance, and one of -- a gentleman who I</p> <p>6 worked with in the past who would bring the team</p> <p>7 different projects -- are you familiar with Shark Tank?</p> <p>8 Do you ever watch that?</p> <p>9 Q. No.</p> <p>10 A. Okay. That's the easiest -- easiest way.</p> <p>11 It's kind of like Shark Tank. People would bring us</p> <p>12 projects. They give a demonstration and so forth.</p> <p>13 We'd talk about it. They'd show us their -- whatever</p> <p>14 business plan they have at that time and, you know, we</p> <p>15 discuss it and so forth. Then we decide whether or not</p> <p>16 we're going to go forward with that particular project</p> <p>17 or not and assist them in funding it.</p> <p>18 In this particular case, this gentleman</p> <p>19 brought me a project. He says, "I know it's not what</p> <p>20 you normally do." He says, "But I have this attorney</p> <p>21 who needs some help." And he says, "I know it's a lot</p> <p>22 smaller than what you're usually, you know, involved</p> <p>23 in." And he says, "But he's a nice guy. I'd like you</p> <p>24 to spend some time and meet with him." So I did.</p> <p>25 And basically he -- he was a ADA attorney.</p>	<p>52</p>

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1 His name was James Johnstone. And his problem was he
 2 was very busy and filing and working a lot of ADA
 3 cases, and it was costing him on average about \$1,500,
 4 he thought, per case to do this. And so he was looking
 5 for -- and he didn't have the money or the filing fees
 6 and the secretarial to keep up with the workload that
 7 he had. So he was looking for some type of financing
 8 arrangement. And so that's how I got involved with
 9 this particular project.

10 So I asked him -- I said, "okay, show me"
 11 -- you know, he explained to me the whole thing about
 12 the ADA and how, you know, the plaintiffs -- it's
 13 different than PIP work, you know, where, you know, the
 14 plaintiffs -- you know, in an auto injury case, the
 15 plaintiffs get paid and so forth for their injuries and
 16 so forth. He explained to me in the ADA, it's not like
 17 that at all. And I asked him for some historicals and
 18 so he presented me the historicals and sure enough,
 19 they beared out and it seemed like something that
 20 should be financeable, so.

21 Q. And that was your introduction to the ADA
 22 world?

23 A. That was my introduction to the ADA world.

24 Q. Okay. And then according to your resume,
 25 it looks like in 2004 you became a consultant for

53 1 chain to perform these inspections.

55

2 Q. Did you do anything other than performing
 3 inspections in relation to this?

4 A. No.

5 Q. Okay. And so we're saying the same thing
 6 -- I mean, I think we are but let's just make sure.
 7 When -- when I say perform an inspection, I mean go to
 8 the property, determine whether or not the aspects of
 9 the property comply with the technical regulations of
 10 the ADA and the Code of Federal Regulations.

11 A. Yes.

12 Q. Is that what you mean when you say perform
 13 inspections?

14 A. Perform inspections and also fill out
 15 reports.

16 Q. Okay. And fill out reports.

17 A. Yeah.

18 Q. And so the inspection is -- is really just
 19 a black-and-white determination of whether or not the
 20 aisles are a permissible width?

21 A. Yes.

22 Q. Whether or not the bathrooms are
 23 compliant?

24 A. Yes.

25 Q. Whether or not the checkout counters are

54 1 Accesssolutions.com?

2 A. That's correct.

3 Q. And it appears that the purpose of
 4 Accesssolutions.com was to provide services related to
 5 ADA compliance?

6 A. That's correct.

7 Q. Okay. And so at this time you started to
 8 perform compliance inspections?

9 A. Yes.

10 Q. All right. And it looks here -- according
 11 -- it looks like, according to your resume, you started
 12 to do some activity related to litigation. You list
 13 document review and then initial and Rule 34 report
 14 preparation; is that correct?

15 A. Yes. we did -- did several different --
 16 it wasn't all litigation. we had -- we worked on a
 17 special project that was -- it wasn't sponsored by the
 18 Department of Justice, but it happened that -- it
 19 happened to regard a national grocery chain. And they
 20 were sued by the Department of Justice, and they
 21 attempted to fix their properties on their own and
 22 failed. DOJ gave them some additional time and they
 23 failed again. And so the DOJ required them to go out
 24 and hire outside experts, ADA experts. So I was one of
 25 the persons that was hired by the national grocery

55 1 compliant?

2 A. Yes.

3 Q. And your determination was solely to be
 4 whether or not those measurement requirements to the
 5 ADA were, in fact, complied with?

6 A. Yes. And in addition to that, I was -- I
 7 was asked to actually provide the actual measurements,
 8 whatever they were.

9 Q. Right. Okay. And that would be a part of
 10 what would be in your report?

11 A. Yes.

12 Q. Okay. Did you -- and that was the extent
 13 of your involvement with respect to this --

14 A. Project.

15 Q. -- grocery store chain project?

16 A. Yes.

17 Q. Okay. Now, your resume says -- or your
 18 C.V. says that you started ADA Assistance Group, Inc.
 19 in 2007; is that correct?

20 A. Yes.

21 Q. But during this particular period of time,
 22 you were still serving as a consultant for ADA
 23 Compliance Team, Inc.?

24 A. Yes. Well, actually, yes, there was some
 25 overlap.

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<p>1 Q. Okay. Where is ADA -- is ADA Compliance 2 Team, Inc. still in business? 3 A. I don't know. 4 Q. Now, the last sentence in the paragraph 5 you have under ADA Assistance Group, Inc., you say that 6 "our involvement in litigation cases, whether working 7 for the plaintiffs' lawyers or the defendants' lawyers, 8 is with the goal of accomplishing improved 9 accessibility and compliance with the requirements of 10 the ADA consistent with the intent of the ADA, that 11 such accessibility should be accomplished at reasonable 12 cost and effort." Did I read that correctly? 13 A. That's correct. 14 Q. Hopefully slowly enough. All right. What 15 do you mean when you say "at reasonable cost and 16 effort"? 17 A. What I mean there is the ADA requires that 18 barriers be removed that are readily achievable. And 19 in these particular -- what I also mean, in addition to 20 that, is that if we can find a method -- I mean, to 21 remove a barrier, there are several -- there's usually 22 several ways of removing the barrier. Some are more 23 expensive than others. 24 Q. Okay. 25 A. So that's what I meant by that sentence.</p>	57	<p>1 A. In 2013? 2 Q. Correct. 3 A. Yes. 4 Q. Was it more than ten? 5 A. Yes. 6 Q. Were any of them located in North 7 Carolina? 8 A. Yes. 9 Q. Do you recall the names of those located 10 in North Carolina? 11 A. No. I don't recall the names. 12 Q. How many defendants in North Carolina do 13 you think you performed inspections for in 2013? 14 A. I can't recall. 15 Q. Have you ever been designated as an expert 16 by any defendant in a lawsuit? 17 A. Designated by the defendant in a lawsuit? 18 Yes. 19 Q. When? 20 A. 2013. 21 Q. Who was that? 22 A. Let's see. I don't recall the name. It 23 was a person that owned two gas stations and was being 24 -- he was -- he was sued at one of the gas stations, 25 and since he owned the two, he wanted to do something</p>	59
<p>1 Q. So, in other words, if you were advising a 2 business and they had two ways to remove a barrier, you 3 would educate them about the choices and advise them to 4 choose the one that costs less money? 5 A. No. I would advise them what their 6 choices are and they would choose. 7 Q. All right. So if a business had two 8 choices, one was more expensive than the other, and the 9 goal of your organization is to accomplish the absence 10 of violation, right -- 11 A. Uh-huh. 12 Q. -- meet the requirements of ADA at a 13 reasonable cost, wouldn't you think that a business 14 would typically choose the lesser expensive option? 15 A. Sometimes they do; sometimes they don't, 16 primarily because of aesthetics or maybe they decide 17 one methodology actually helps with customer relations. 18 So it's -- but the choice is always totally up to them. 19 Q. In 2013 how many times did you personally 20 perform inspections for defendants in lawsuits? 21 A. 2013? 22 Q. Yes. 23 A. I don't know that number. 24 Q. Did you ever perform any inspections for 25 defendants in lawsuits?</p>	58	<p>1 proactively. So he asked me, in addition to providing 2 the inspection and the report, "Please do my other gas 3 station." 4 Q. What kind of gas station was it? Do you 5 know? 6 A. You mean the name brand? 7 Q. Yeah. 8 A. I don't recall. 9 Q. Where was it located? 10 A. Broward County. 11 Q. Broward County, Florida? 12 A. Yes, Broward County, Florida. 13 Q. Okay. So that's the only time you recall 14 being designated as an expert by the defendant; is that 15 correct, in 2013? 16 A. Yes, in 2013. 17 Q. Okay. 18 A. Involving litigation. 19 Q. Well, there wouldn't be a defendant 20 otherwise. 21 A. That's true. But I have been called to 22 perform proactive inspections to avoid litigation. 23 Q. On the first page of your C.V., the last 24 sentence on the first page, you say, "It is our mission 25 to facilitate fiscally responsible solutions and</p>	60

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1 proactively addressing the removal of architectural and
 2 communication barriers in today's society." What do
 3 you mean when you say "facilitate fiscally responsible
 4 solutions"?

5 A. To assist in finding financial solutions
 6 to their barrier and removal problem.

7 Q. Well, how do you determine if that
 8 solution is fiscally responsible?

9 A. Fiscally responsible would be anything
 10 that gets the job done of removing the existing
 11 barriers.

12 Q. That doesn't have anything to do with the
 13 fiscal nature of the fix, though, what you just said.

14 A. Well, the fiscal nature is actually the
 15 cost.

16 Q. Right.

17 A. Right. And we went over before there were
 18 several -- there's usually several different ways of
 19 which you can remove a particular barrier.

20 Q. Have you ever encountered a situation
 21 where you've advised a defendant that removal of a
 22 barrier was not readily achievable?

23 A. Yes.

24 Q. Provide me an example.

25 A. An example would be where you're in a

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1 Q. So in order to determine whether or not
 2 something is fiscally responsible or readily
 3 achievable, you've got to consider all the factors that
 4 are listed in the statute to define readily achievable;
 5 is that correct?

6 A. Absolutely, yes.

7 Q. Okay. And that would include both the
 8 financial resources of the premises, you know, the
 9 entity that's the part of the defendant, and you said
 10 the financial resources of the overall entity; is that
 11 correct?

12 A. That's correct.

13 Q. So if you did not analyze -- would there
 14 ever be instances where the failure to analyze that
 15 information would render you unable to determine that
 16 removal of a barrier is readily achievable?

17 MR. LANE: Objection.

18 Q. Let me put it a different way, all right?
 19 I own Bob's Restaurant, right, and you come in and you
 20 see that my mirror is placed too high. And you say,
 21 "P.J., that mirror is too high. Here are the regs that
 22 say it's got to be only so many inches off the finished
 23 floor." You wouldn't need to really see how much money
 24 I had in order to determine whether or not the fix is
 25 readily achievable, would you?

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1 parking lot where there is a steep slope and there's
 2 not enough room to repave because there's a sidewalk or
 3 something that's abutting that. There's not enough
 4 room to repave it so that you can get to a accessible
 5 slope. That would be not readily achievable,
 6 especially if it ran into the hundreds of thousands of
 7 dollars to do so.

8 But that being said, there are -- the --
 9 there's a second prong on readily achievable, and
 10 that's the financial ability of the particular entity
 11 to fix, so it's really relative. There's -- there's --
 12 what's -- what's readily achievable is different in a
 13 -- let's say Bob's Restaurant, you know, 15, you know,
 14 whatever, a 3,000-square-foot restaurant versus Simon
 15 Properties, you know, which is a mall. Let's just say
 16 it's one of their malls, okay? There's a big
 17 difference in their financial ability to remove
 18 barriers, and so that's one of the prongs that's used
 19 when you define what's readily achievable.

20 Q. And would this, you know, desire of yours
 21 to facilitate fiscally responsible solutions, it sounds
 22 like you analyze some of the same data in determining
 23 what's fiscally responsible as you would in determining
 24 what's readily achievable; is that correct?

25 A. Yes. That's correct.

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1 A. That's correct.

2 MR. LANE: Objection.

3 Q. Okay. If the space in between the
 4 banquets, the booths on the side of the restaurant,
 5 you know, and there are another row of booths there,
 6 and the distance doesn't satisfy the ADA, the aisle
 7 distance, --

8 A. Uh-huh.

9 Q. -- and you come to me and you say, "Well,
 10 we've got to move those." And I say, "Well, I'm going
 11 to lose a row of tables on the other side," right --
 12 Bob's Restaurant, it's all about turnover, getting
 13 people in and out and sell food -- would you have to
 14 analyze the finances of Bob's Restaurant in order to
 15 determine what potential options I would have in terms
 16 of making readily achievable modifications?

17 MR. LANE: Objection.

18 A. It would be one of my considerations.

19 Q. It would be one of your considerations?

20 And so what would you need in order -- in that
 21 situation, to determine whether or not -- or to
 22 determine which modifications would be readily
 23 achievable, in your opinion?

24 A. I think the answer would be better served
 25 as I would -- in that particular scenario, I might

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1 suggest that maybe he -- if the answer was to increase 65
2 the space, which means he lose a -- loses a booth,
3 let's say, --
4 Q. Or a row of booths.
5 A. -- or a row of booths, I might suggest
6 that maybe he put in some tables instead so you still
7 have the same headcount and still become ADA compliant.
8 Q. Going back to your C.V., the third
9 paragraph here, it says that you've provided services
10 for law firms by reviewing and analyzing documents,
11 providing attorneys with strengths and weaknesses of
12 the case, conducting accessibility reviews, writing the
13 reports we've talked about, and determining reasonable
14 accommodations and identifying general discriminatory
15 practices. Is all this related to the technical nature
16 of the ADA?
17 A. I'm sorry. Where are you reading from?
18 Q. The first page.
19 A. Okay.
20 Q. Right at the third paragraph under
21 "Professional Experience." You list the different
22 services that you provide to law firms.
23 A. Okay, yes.
24 Q. Okay. And I just -- I -- I think we've
25 covered this, but I just want to make sure.

1 A. Uh-huh.
2 Q. This all relates to your -- your
3 understanding of the technical requirements of the ADA;
4 is that correct?
5 A. Most of the time, yes.
6 Q. Okay. What else do you provide them
7 services in respect to?
8 A. I guess it would pretty much all relate to
9 the ADA.
10 Q. Is the address here at the top still
11 correct, this 3876 Southwest 112 Avenue?
12 A. No. It's 12742.
13 Q. That's all one number?
14 A. Yes.
15 Q. Okay.
16 A. Southwest -- I'm sorry. 12741 Southwest
17 42 Street, same number, number 115, Miami, Florida
18 33175.
19 Q. Is your phone number is still accurate?
20 A. Yes.
21 Q. Is your e-mail address still accurate?
22 A. Yes.
23 Q. Okay.
24 (DEFENDANT'S EXHIBIT NUMBER 9 WAS MARKED
25 AND HANDED TO THE WITNESS.)

1 Q. I'll show you what's been marked as 67
2 Deposition Exhibit Number 9 and ask if you've ever seen
3 this document?
4 A. Yes, I have.
5 Q. When have you seen it?
6 A. Not in awhile.
7 Q. What does that mean?
8 A. I guess I saw a document that was similar
9 to this. Let me put it that way. Let me rephrase my
10 answer.
11 Q. All right. So you've seen a document
12 similar to this. Have you ever seen this document?
13 A. No.
14 Q. You've never seen this document?
15 A. I have not.
16 Q. All right. If you look at the first page
17 where it says number 1, it lists your name. That's not
18 the correct address of your company, is it?
19 A. No. That's the old address.
20 Q. Okay. And your signature doesn't appear
21 anywhere on this document, does it?
22 A. No, it doesn't.
23 Q. Okay. Great. This is a document that was
24 served by Mr. Lane, and I just want to go over this in
25 a little more detail with you. You'll see here that

1 underneath where it lists your incorrect address, Mr. 68
2 Lane says that you will testify as plaintiff's expert
3 on Title III of the Americans with Disabilities Act,
4 its regulations and guidelines, and their application
5 to the facilities and businesses that are subject of
6 the instant lawsuit. Is that, in fact, what your
7 expert opinion will be on?
8 A. Yes.
9 Q. Okay. Now, if you turn to the second
10 page, it says here at the top, "A final report will be
11 forthcoming upon the plaintiff undertaking an
12 inspection of the property under Rule 34," and that's
13 an abbreviation for the Federal Rules of Civil
14 Procedure. Do you see that?
15 A. Yes.
16 Q. All right. If you look down here at the
17 bottom, it says that the date this was submitted was
18 December 31st of 2013.
19 A. Okay.
20 Q. All right. At this time, you had already
21 submitted a Rule 34 report, had you not?
22 A. That's correct.
23 Q. Okay. Mr. Lane states on his own
24 information and belief that you have not provided any
25 deposition testimony within the last four years and

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1 have authored no publications within the preceding ten
2 years; is that correct?
3 A. That's correct.
4 Q. Okay. Does this document contain a
5 complete statement of all the opinions you're going to
6 express in this case?
7 A. I believe so.
8 Q. What about all the topics on which you
9 will be providing expert testimony?
10 A. What do you mean, ADA topics?
11 Q. Well, it says here -- I'll read it to you
12 -- "Title III of the Americans with Disabilities Act,
13 its regulations and guidelines and their application to
14 the facilities and businesses that are subject of the
15 instant law suit."
16 MR. PURYEAR: I apologize for
17 reading so quickly. Do you need me to
18 read that again?
19 THE COURT REPORTER: No. It's
20 fine.
21 MR. PURYEAR: Okay. All right.
22 A. Well, the answer would be yes.
23 Q. Okay. Does it contain the basis and
24 reasons for the opinion you will express?
25 A. Yes.

1 Q. Where does it contain the basis and
2 reasons for the opinions you will express?
3 A. The basis is going to be in the
4 regulations and guidelines themselves.
5 Q. Okay. And what about the reasons for your
6 opinions? Does it contain those?
7 A. Again, based on the regulations and
8 guidelines.
9 Q. Okay. But isn't it more accurate to say
10 that the application of the regs and the guidelines are
11 going to be the reasons for the opinion you're going to
12 express?
13 A. They're going to be part of it, yes.
14 Q. Right. Because you're not just here to
15 tell me what the ADA says. You're here to tell me how
16 it applies to the store, aren't you?
17 A. That's correct.
18 Q. All right. It doesn't say that in this
19 document, though, does it?
20 A. It says, "Its regulations, guidelines and
21 their application to the facilities."
22 Q. Okay. And that's all it says?
23 A. "That are subject to -- of the instant
24 lawsuit."
25 Q. That's all it says; is that correct?

69 1 A. Which I guess is this lawsuit.
2 Q. All right. But does it provide the
3 reasons for your actual opinions?
4 A. Does it specifically state, "The reasons
5 for my opinions will be"? It does not say that in
6 here.
7 Q. All right. Does this document contain all
8 the facts and data you considered in forming the
9 opinions you're going to express today?
10 A. We're talking about the ADA regulations
11 and guidelines, yes.
12 Q. So this document right here, which is
13 three pages with the Certificate of Service, it
14 contains all the facts and data you considered in
15 forming your opinions?
16 MR. LANE: Objection.
17 A. Yes. It says the subject matter of my
18 opinion testimony will be able to -- will be to
19 identify the ADA violations on the property.
20 Q. In other cases in which you've been an
21 expert, has the plaintiff or defendant for whom you've
22 been also designated as an expert, designated
23 separately a financial expert for the case?
24 A. Yes.
25 Q. Okay. How many times has that happened?

70 1 A. I can't recall.
2 Q. More than once?
3 A. I can't recall.
4 Q. Okay. And the reason for that is you
5 don't have any financial training other than your
6 experience in raising capital for early start-up
7 companies; is that correct?
8 A. That's correct.
9 Q. You do not have an MBA?
10 A. I do not have an MBA.
11 Q. Have you ever taken any accounting
12 classes?
13 A. Yes.
14 Q. What accounting classes have you taken?
15 A. Basic accounting classes.
16 Q. And when did you take the basic accounting
17 classes?
18 A. I can't recall, but it's been more than
19 ten years.
20 Q. So in the last ten years, there's been no
21 accounting classes taken by you, no business degree
22 obtained by you; is that correct?
23 A. That's correct.
24 (DEFENDANT'S EXHIBIT NUMBER 10 WAS MARKED
25 AND HANDED TO THE WITNESS.)

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<p>1 Q. Let me show you what's been marked as 2 Deposition Exhibit 10 and ask whether or not you 3 recognize this document? 4 A. This document, I don't recall. 5 Q. Okay. Do you see where on page 3 your 6 name is listed? 7 A. I do see that. 8 Q. And you were disclosed as an expert for 9 the plaintiff in this case, which was Access for the 10 Disabled, Inc. and Denise Payne? 11 A. That is correct. 12 Q. But you don't remember being designated as 13 an expert in this case? 14 A. I don't remember that. 15 Q. Okay. Do you see on the second page where 16 Gary Paul Wachsmann was disclosed as an expert? 17 A. I read that here, yes. 18 Q. Okay. Are you a licensed certified public 19 accountant? 20 A. I am not. 21 Q. All right. Do you know who David Pedraza 22 is? 23 A. Yes. 24 Q. Who is David Pedraza? P-E-D-R-A-Z-A. 25 A. David Pedraza is a ADA expert.</p>	<p>73 Q. And do you know who Thomas Bacon is? 2 A. Yes. 3 Q. How do you know Mr. Bacon? 4 A. Mr. Bacon -- I know Mr. Bacon -- he's an 5 attorney that calls me for work from time to time. 6 Q. How long have you known Mr. Bacon? 7 A. Let's see. I can't recall how long. It's 8 been awhile. 9 Q. Okay. A couple years? 10 A. Yes. 11 Q. I mean, this case was filed in 2010. 12 A. Yeah. Definitely a couple of years. 13 Q. All right. So he's familiar with your 14 expertise? 15 A. Yes. 16 Q. Okay. Let's go back to Deposition Exhibit 17 Number 9, and you see at the bottom of page 1 where it 18 says, "The initial report of the violations existing on 19 the property is attached hereto"? 20 A. Uh-huh. 21 Q. Okay. I'll show you what's been -- if 22 you'll look in your pile for what's previously been 23 marked as Deposition Exhibit 5. This should be in 24 reverse -- 25 A. Yeah. That's why I'm trying to --</p>
<p>1 Q. Why would Mr. Pedraza and you both be 2 disclosed as experts in this case? 3 A. I do not know, but I did work for 4 Mr. Pedraza. 5 Q. Okay. Does he have any better 6 understanding of the ADA than you do? 7 A. I believe he might. He's had more 8 experience. 9 Q. He's had more experience than you have? 10 A. Yes. 11 Q. Okay. So even though Mr. Pedraza was 12 listed as an expert on this case, this attorney, whose 13 name is Pete Monisith, M-O-N-I-S-I-T-H [sic], still 14 felt it necessary to disclose a CPA as an expert, 15 didn't he? 16 A. I don't know what his intentions were 17 putting him on this document. 18 Q. But you do see that he disclosed a 19 separate expert to testify as to the financial ability 20 of the defendant to bring the property into ADA 21 compliance? That's what it says underneath his name, 22 doesn't it? 23 A. It says that he's a licensed CPA, yes. 24 Q. Do you know who Pete Monisith [sic] is? 25 A. He's an attorney, I guess. Yes.</p>	<p>74 Q. Yeah, it should be right behind that. 2 A. There we go. 3 Q. There you go, okay. Do you recognize this 4 document? 5 A. Yes. 6 Q. All right. Is this the initial -- is this 7 the initial report of the violations referred to in the 8 expert disclosure filed by Mr. Lane? 9 A. It is not the initial report. 10 Q. Okay. What did the initial report look 11 like? 12 A. I don't see it in this stack. 13 Q. I don't believe it is. 14 A. Okay. 15 Q. Well, what do you think it looks like? 16 A. Oh, what I think -- it's hard for me to 17 describe what a report looks like. It has paragraphs. 18 I don't -- you know, it's a report. This is a 19 checklist or what I would consider a checklist. 20 Q. Okay. Did you fill out the report you're 21 talking about at the same time you filled out this 22 checklist? 23 A. No. 24 Q. When did you fill out the report? Do you 25 recall?</p>

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1	A. I don't recall.	77	1	not have a checkmark in it, does that mean you did not	79
2	Q. Going back to Deposition Exhibit Number 5,		2	discover any violation with respect to that particular	
3	is this a document that you prepared?		3	portion of the property?	
4	A. That's correct.		4	A. That means that I did not see any -- see	
5	Q. How did you prepare it?		5	any particular violation at that time. This is an	
6	A. I basically just, you know, prepared it.		6	initial report and it's not a -- it's not as	
7	I just put checkmarks and that's it, based on -- based		7	comprehensive as a Rule 34.	
8	on my pictures and measurements.		8	Q. But this is not the initial report? This	
9	Q. Okay. And would those be the pictures and		9	is just a checklist?	
10	measurements that you took when you came out to meet		10	A. You're right. You're right. Yes.	
11	Mr. Richardson?		11	Q. All right. Did you prepare an initial	
12	A. Yes.		12	report and a checklist similar to this but with respect	
13	Q. Okay.		13	to the entire shopping center?	
14	A. For the initial report, yes.		14	A. To the entire shopping center?	
15	Q. Okay. So the pictures and measurements		15	Q. Yeah. This is at Village Shopping Center.	
16	you took at Roses when you came to meet Mr. Richardson		16	A. Oh, yes.	
17	formed the basis of this initial report that exists		17	Q. Okay. Did you prepare those at the same	
18	somewhere and this checklist?		18	time?	
19	A. That's correct.		19	A. I don't recall.	
20	Q. The date on this checklist is November 9,		20	Q. Okay. Do you still have copies of those	
21	2012. Do you have any reason to believe that's not		21	documents?	
22	accurate?		22	A. I don't recall if I have them or not.	
23	A. That would be the date of which I actually		23	Q. Do you still have a copy of this document?	
24	prepared the checklist.		24	A. I probably do.	
25	Q. Okay. And up in the top left-hand corner,		25	Q. Okay. So let's talk about the violations	
1	there's a file number.	78	1	you did say you found. Under the "Entrance Access and	80
2	A. Yes.		2	Path of Travel," there's a checkmark and it says,	
3	Q. What does this refer to?		3	3 "Pathway of 36 inches of clear W is not provided."	
4	A. It refers to a file number that is used		4	What does that mean?	
5	when I speak with an attorney, and it's just easier for		5	A. Clear width is not provided. It's just	
6	us to understand as opposed to giving me a defendant's		6	abbreviations being used because it just didn't fit.	
7	name which I may not know. It's just easier to see a		7	Clear width.	
8	file number.		8	Q. All right. What about under "Access to	
9	Q. So the file number here is 1615-NC? Does		9	Goods and Services," this first one that's "Tel.	
10	that mean that this is the 1,615th checklist you've		10	controls"?	
11	filled out for North Carolina?		11	A. That would usually mean that the controls	
12	A. No.		12	on the telephone were greater than 48 and greater than	
13	Q. Does that number have any relevance?		13	54 inches.	
14	A. It does not, except for the North Carolina		14	(TELEPHONE RINGING)	
15	portion.		15	A. I believe this --	
16	Q. Okay. All right. And the address on here		16	MR. PURYEAR: Can we go off the	
17	states it's the Roses at the Village Shopping Center		17	record for a second?	
18	which is the Roses at issue in this dispute, is it not?		18	(OFF THE RECORD AT 12:37 P.M.)	
19	A. That's correct.		19	(BACK ON THE RECORD AT 12:37 P.M.)	
20	Q. Okay. Now, I see out of all the possible		20	A. This, to me, looks like a typo. I do not	
21	places to put checkmarks on here, there's three on the		21	recall there being any telephones at that -- I don't --	
22	first page and eight on the second; is that correct?		22	I don't recall whether there are or there aren't.	
23	A. Eight on the second, yes.		23	Q. Okay. Well, I'll submit to you that	
24	Q. Okay. So let's -- so if there are no		24	there's no violation noted in your Rule 34 report with	
25	checkmarks -- if a box on this particular document does		25	respect to telephones.	

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<p>1 A. Right.</p> <p>2 Q. And Mr. Richardson says he doesn't even</p> <p>3 remember if there's any telephones there, and I don't</p> <p>4 remember if there's any telephones there.</p> <p>5 A. And I totally agree. And that's why I</p> <p>6 said --</p> <p>7 Q. Okay.</p> <p>8 A. -- it looks like a typo on my part.</p> <p>9 Q. All right. What about "Facility doesn't</p> <p>10 maintain the access. elements." What is that short</p> <p>11 for?</p> <p>12 A. Facility does not maintain the accessible</p> <p>13 elements.</p> <p>14 Q. And what does that mean?</p> <p>15 A. Generally that means that -- that there</p> <p>16 are accessible elements that are present that are not</p> <p>17 being maintained. In other words, let's say a</p> <p>18 bathroom, for instance, and not in this particular</p> <p>19 case, but a typical bathroom, and you would see that</p> <p>20 there's a trash can there and the maneuvering clearance</p> <p>21 of the space, all right? That would be an example of</p> <p>22 an accessible element that was not maintained. In</p> <p>23 other words, that trash can should not be obstructing</p> <p>24 the maneuvering case. It should be moved to a place it</p> <p>25 doesn't obstruct. Another example would be maintaining</p>	81	<p>1 Q. Okay.</p> <p>2 A. There may have been a trash can as I -- as</p> <p>3 in my example of the restroom.</p> <p>4 Q. All right. So we're going to finish this</p> <p>5 document and then we'll take a short break for lunch.</p> <p>6 Is that okay?</p> <p>7 A. Sure.</p> <p>8 Q. All right, great. All right. So then we</p> <p>9 have public restrooms. You say, "Standard stall 60 by</p> <p>10 60 is not provided." Is that required under both the</p> <p>11 1991 and the 2010 regulations?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know what section of the code from</p> <p>14 1991 requires that?</p> <p>15 A. I don't recollect.</p> <p>16 Q. It says, "Compliant grab bars are not</p> <p>17 provided." What makes grab bars compliant?</p> <p>18 A. There are several things that make them</p> <p>19 compliant and there are several things that make them</p> <p>20 noncompliant. I mean, compliant grab bars -- and it</p> <p>21 depends on the situation. If you have a 60 by 60</p> <p>22 stall, compliant grab bars would mean you'd have a rear</p> <p>23 grab bar and you'd have a side grab bar. Rear grab bar</p> <p>24 would be 36 inches. The side grab bar would be 42</p> <p>25 inches mounted at certain distances from the wall, also</p>	83
<p>1 the 36-inch aisles, maintaining a path of travel</p> <p>2 throughout the facility. That would be an example of a</p> <p>3 failure to maintain the accessible elements.</p> <p>4 Q. What if the curve ramp was greater than</p> <p>5 8.33 percent slope? Would that be a failure to</p> <p>6 maintain accessible elements?</p> <p>7 A. Not unless that particular curve ramp was</p> <p>8 cracked, that type of thing.</p> <p>9 Q. Okay.</p> <p>10 A. That would be an architectural flaw.</p> <p>11 Q. So this isn't necessarily a catchall for</p> <p>12 everything. You're just saying there's a part of the</p> <p>13 store that's accessible but not maintained; --</p> <p>14 A. That's correct.</p> <p>15 Q. -- is that right? Okay. And looking at</p> <p>16 this document now, do you have any idea why you checked</p> <p>17 that particular box?</p> <p>18 A. Which one?</p> <p>19 Q. The "Facility doesn't maintain the</p> <p>20 accessible elements." And when I ask that, I mean</p> <p>21 specifically, do you know what element they weren't</p> <p>22 maintaining?</p> <p>23 A. I -- I believe it was the 36-inch aisles</p> <p>24 was one of the examples, and I don't recall if there</p> <p>25 were others.</p>	82	<p>1 mounted between 33 and 36 inches from the finished</p> <p>2 floor.</p> <p>3 if you had a -- what's called a</p> <p>4 semi-ambulatory stall, which is usually a 36-inch</p> <p>5 stall, which is -- which is allowed if you have one of</p> <p>6 these first, okay, and that would be -- that</p> <p>7 configuration is the two sets of side grab bars without</p> <p>8 the rear grab bar.</p> <p>9 Q. Okay.</p> <p>10 A. Also, grab bars, you know, have to be</p> <p>11 structural -- certain structural strength to withstand,</p> <p>12 you know, 250 pounds of pressure without breaking off</p> <p>13 the wall, that type of thing.</p> <p>14 Q. That would be bad. Down here at the very</p> <p>15 bottom of this page, you've got a "Note" section.</p> <p>16 A. Yes.</p> <p>17 Q. Is it typical for you to put notes into</p> <p>18 these checklists?</p> <p>19 A. It can be if -- if there's a particular</p> <p>20 item or element that is not exhibited here. You would</p> <p>21 -- I would use that to expand upon what else was</p> <p>22 discovered.</p> <p>23 Q. Okay. At the time you inspected the Roses</p> <p>24 for purposes of this -- I'm not talking about the Rule</p> <p>25 34. We'll get to that after lunch. For purposes of</p>	84

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1 this, how much time did you spend performing the
2 inspection?
3 A. This particular inspection was about, I
4 would say, 30 minutes. The actual inspection?
5 Q. Correct.
6 A. In other words, me being there taking
7 pictures and --
8 Q. Yeah.
9 A. The actual inspection was about 30
10 minutes.
11 Q. Okay.
12 A. It does not include preparing the
13 checklist, the report or anything else or putting the
14 pictures wherever.
15 Q. And did you -- at the time that you
16 inspected the Roses, did you also inspect the rest of
17 the shopping center?
18 A. I don't recall if it was the same day or
19 if it was different days.
20 Q. Would your ledger reflects the days that
21 you inspected the Roses and inspected the shopping
22 center?
23 A. Yes.
24 Q. But as you sit here right now, you don't
25 recall whether it was the same day or not?

85 1 lawsuit?

87

2 A. I don't recall. Probably two or three
3 times. Definitely two. Three. Maybe three times,
4 maybe four. I -- I really don't recall. I know it was
5 more than two, probably less than five.

6 Q. And what was the date of your last visit?
7 A. The date of the last visit was this
8 morning.

9 Q. How long did you spend in the store?
10 A. Ten minutes.

11 Q. What sections of the store did you visit?
12 A. Pretty much the majority of the store.
13 Q. Did you speak to any of the employees or
14 the store manager while you were there?

15 A. Only to respond to their hello as "hello"
16 and that's it.

17 Q. Other than the visit you had this morning,
18 what was the -- do you know the date or approximate
19 date of the visit -- the last visit before that?

20 A. No, I do not.

21 Q. Did you create any documentation relating
22 to your visit this morning?

23 A. I did not.

24 Q. Okay. Have you created any documentation
25 related to your visits to the Roses store other than

1 A. I do not recall.
2 Q. Okay. Let's take a break.
3 (OFF THE RECORD AT 12:44 P.M.)
4 (BACK ON THE RECORD AT 1:13 P.M.)
5 Q. Good afternoon, Mr. Childers.
6 A. Good afternoon.
7 Q. At the beginning of the deposition, I
8 asked you whether anything prevented you from providing
9 accurate, truthful testimony here today, and you
10 answered no. Since -- now that we're returning from a
11 break, is there anything that prevents you from
12 continuing to provide truthful and accurate testimony?
13 A. No.
14 Q. Okay. Did you speak with anyone other
15 than your attorney during the break about this case?
16 A. No.
17 Q. Okay. Did you take any medications during
18 the break?
19 A. No.
20 Q. All right. When we left off, I believe we
21 were talking about the checklist --
22 A. Yes.
23 Q. -- that you filled out upon your initial
24 visit to the store. How many other times have you
25 visited the Roses store that's at issue in this

86 1 the initial report, the initial checklist in your Rule
2 34 inspection?

88

3 A. That's it.

4 Q. If you would, pull out Deposition Exhibit
5 Number 6 from your stack, Mr. Childers.

6 A. They're out of order. Okay, 6.

7 Q. There you go.

8 A. Okay.

9 Q. Do you recognize this document?

10 A. Yes.

11 Q. And is this the Rule 34 inspection report
12 we've been referring to?

13 A. Yes, sir.

14 Q. My copy has 51 pages. Does yours have --
15 and they're numbered. The last page is numbered 51.

16 Is that the same --

17 A. Yes.

18 Q. -- for yours?

19 A. Yes.

20 Q. Okay. And is this a pretty standard Rule
21 34 report?

22 A. Yes.

23 Q. Okay. There's nothing atypical about
24 this?

25 A. Currently, yes.

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1 Q. Currently, okay. Describe for me how one 2 determines which version of the ADA applies. 3 A. You're talking about between 1991 and 4 2010? 5 Q. Sure. 6 A. The way you determine that is the 2010 7 provides certain safe harbors for things that existed 8 before that were compliant before. In other words, an 9 example would be the 2010 regs now say that the reach 10 ranges for particular items like a soap dispenser now 11 is moved down to 48 inches where the 2- -- where the 12 1991 regs stated 54 or 48, depending if it was a 13 forward approach or a side approach. 14 And so what 2010 says is that if you 15 complied with 1991 standards, in other words, those 16 reach ranges were in that range, you do not have to 17 move them now from 54 inches down to 48. So in other 18 words, you're safe harbored. It then goes on to say 19 that if you did not comply with 1991, now you must 20 comply with 2010. 21 In other words, when you -- when you move 22 -- when you move that soap dispenser down now, it must 23 be 48. You can no longer use the 1991 of 54, so you 24 don't really get to pick and choose. And that really 25 decides -- the violation of the 1991 standard is what	89	1 violation at this store; is that correct? 2 A. That's correct. 3 Q. Okay. What -- is there any kind of a 4 black-line rule about what constitutes a modification 5 sufficient to trigger the 2010 standards? 6 A. It's usually element by element. In other 7 words, the mirror is too high, okay? Now, in this 8 case, the -- the mirror -- a bad example because they 9 stayed the same. They were -- they were -- you know, 10 the soap dispenser is a better example. In that case, 11 you know, that would trigger the element by element. 12 In other words, if the rest of the bathroom was -- if 13 the rest of the bathroom was compliant and that soap 14 dispenser was too high -- if it was compliant with 1991 15 and that soap dispenser was too high, you would have to 16 move the soap dispenser, but you would not have to move 17 everything else -- 18 Q. In the bathroom. 19 A. -- in the bathroom, okay? It only applies 20 element by element. That being said, if you were to 21 take that same bathroom and let's say the problem was 22 the stall was too small, and you rip out stalls and you 23 -- and you move plumbing and so forth and so on, that 24 becomes a major renovation, and then you would have to 25 bring up the entire restroom to 2010 standards. And	91
1 triggers that you have to move forward to the 2010 2 standards. 3 Q. So if a bathroom, let's say, had not been 4 remodeled since 1991, the applicable ADA regulations 5 for that bathroom would be the 1991 regulations and not 6 the 2010 regulations? 7 A. That is correct. 8 Q. Okay. And is that true for all aspects of 9 the ADA, all aspects of Title 3 of the ADA, just so 10 we're clear? 11 A. It would be true, but also 2010 addressed 12 new things that had never been scoped before, amusement 13 rides and so forth and those things. So in that case, 14 there isn't -- there isn't a safe harbor. You just 15 have to comply with 2010. So any additional scoping 16 would have to apply with 2010, so. 17 Q. And there's no additional scoping that 18 would apply in this particular case because retail 19 stores were covered under the 1991 regulations; is that 20 correct? 21 A. That would be correct. 22 Q. Okay. So nothing in the store was in 23 violation -- nothing in this store, this Roses store, 24 had been modified since 1991 and was not in violation 25 with the code of 1991, then there would be no ADA	90	1 that -- that's kind of like the line that you were 2 asking for. 3 Q. So, I mean, was it demo work or -- 4 A. Well, ripping out -- ripping out 5 partitions and so forth and moving plumbing, yeah, I 6 would consider that major. 7 Q. Okay. So if there's major -- if there's 8 major modification to an element of the facility, -- 9 A. It becomes an alteration. 10 Q. -- then it becomes -- so that's the test, 11 if there's an alteration? 12 A. Yes. 13 Q. Now, if you make an alteration to a 14 bathroom, does that require you to bring the remainder 15 of the store up to 2010 standards? 16 A. In this -- in your for-instance, no. It 17 would just be the bathroom. Wherever you -- 18 Q. It would just be the bathroom? 19 A. Right. 20 Q. And if you made alterations to the men's 21 restroom, would that require you to bring the women's 22 restroom into 2010 standards? 23 A. I don't believe so. 24 Q. Okay. Now, why -- what do you mean when 25 you say you don't believe so? That's your expert	92